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3
4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF WASHINGTON

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 11, 2018

SEAN F. McAVOY, CLERK

6
7 JUSTIN T.,

8 Plaintiff,

9
10 v.

11 COMMISSIONER OF SOCIAL
12 SECURITY,

13 Defendant.
14

No. 1:17-CV-3146-JTR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

15 **BEFORE THE COURT** are cross-motions for summary judgment. ECF
16 No. 14, 19. Attorney D. James Tree represents Justin T. (Plaintiff); Special
17 Assistant United States Attorney Diana Andsager represents the Commissioner of
18 Social Security (Defendant). The parties have consented to proceed before a
19 magistrate judge. ECF No. 6. After reviewing the administrative record and briefs
20 filed by the parties, the Court **GRANTS** Defendant's Motion for Summary
21 Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

22 **JURISDICTION**

23 On March 11, 2014, Plaintiff filed an application for Supplemental Security
24 Income, alleging disability since October 28, 2006, due to ADHD, Bipolar
25 Disorder, Oppositional Defiant Disorder, PTSD and right shoulder pain. Tr. 166,
26 184. Plaintiff's application was denied initially and upon reconsideration.

27 Administrative Law Judge (ALJ) S. Andrew Grace held a hearing on April
28 8, 2016, Tr. 36-63, and issued an unfavorable decision on May 2, 2016, Tr. 20-31.

1 The Appeals Council denied review on June 27, 2017. Tr. 1-6. The ALJ's May
2 2016 decision thus became the final decision of the Commissioner, which is
3 appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this
4 action for judicial review on August 28, 2017. ECF No. 1, 4.

5 **STATEMENT OF FACTS**

6 The facts of the case are set forth in the administrative hearing transcript, the
7 ALJ's decision, and the briefs of the parties. They are only briefly summarized
8 here.

9 Plaintiff was born on September 17, 1988, and was 18 years old on the
10 alleged onset date, October 28, 2006. Tr. 166. He completed high school in 2006.
11 Tr. 40, 185. Plaintiff's disability report indicates he stopped working on October
12 28, 2010, because of his condition(s). Tr. 185. He last worked as a cook at
13 McDonald's in 2010; the job ended after he had a conflict with the store manager.
14 Tr. 41, 52-53. However, he testified he also performed grounds keeping work for a
15 short period of time in 2014. Tr. 43. Plaintiff stated the main thing preventing him
16 from being able to work was his manic depressive bipolar disorder that caused him
17 to get physical with or yell at employers or customers. Tr. 44.

18 With respect to his mental health, Plaintiff testified his current treatment
19 plan called for medication and weekly counseling sessions, but he indicated he
20 stopped going to counseling because he believed his counselor would share
21 information with his mother. Tr. 44-46. He had been off of mental health
22 medications and had not attended counseling since April of 2015. Tr. 46. As to
23 his physical health, Plaintiff indicated he had "a silver dollar sized dead zone" in
24 his right shoulder which was painful when he was overly active. Tr. 50.

25 Plaintiff reported he spends his days taking long walks and visiting with
26 friends. Tr. 48-49. He stated he has friends that come over almost daily to play
27 video games, and he estimated he used marijuana with these friends every other
28 day. Tr. 49-50. He admitted medical providers had informed him that marijuana

1 use might be interfering with his condition and treatment, but reported he stopped
2 using for a three-month period of time without any noticeable difference. Tr. 50-
3 51.

4 STANDARD OF REVIEW

5 The ALJ is responsible for determining credibility, resolving conflicts in
6 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
7 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
8 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
9 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
10 only if it is not supported by substantial evidence or if it is based on legal error.
11 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
12 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
13 1098. Put another way, substantial evidence is such relevant evidence as a
14 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
15 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one
16 rational interpretation, the Court may not substitute its judgment for that of the
17 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,
18 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the
19 administrative findings, or if conflicting evidence supports a finding of either
20 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*
21 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision
22 supported by substantial evidence will be set aside if the proper legal standards
23 were not applied in weighing the evidence and making the decision. *Browner v.*
24 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

25 SEQUENTIAL EVALUATION PROCESS

26 The Commissioner has established a five-step sequential evaluation process
27 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
28 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through

four, the burden of proof rests upon the claimant to establish a prima facie case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a physical or mental impairment prevents the claimant from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show that the claimant can perform other jobs present in significant numbers in the national economy. *Batson v. Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make an adjustment to other work in the national economy, a finding of “disabled” is made. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

ADMINISTRATIVE DECISION

On May 2, 2016, the ALJ issued a decision finding Plaintiff was not disabled as defined in the Social Security Act.

At step one, the ALJ found Plaintiff had not engaged in substantial gainful activity since the disability application date, March 11, 2014. Tr. 22. At step two, the ALJ determined Plaintiff had the following severe impairments: attention-deficit hyperactivity disorder, bipolar disorder, learning disorder, right trapezius muscle strain, and obesity. Tr. 22. At step three, the ALJ found Plaintiff did not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments. Tr. 23.

The ALJ assessed Plaintiff’s Residual Functional Capacity (RFC) and determined he could perform light exertion level work with the following limitations: he could frequently push and pull with his dominant right upper extremity; he could occasionally climb ladders, ropes, and scaffolds and crawl; he could frequently reach with his dominant right upper extremity; he must avoid concentrated exposure to hazards in the workplace; he was limited to simple, repetitive, routine tasks consistent with unskilled work; he was limited to low-stress work, defined as work requiring few decisions and changes; he could have

1 no contact with the general public; he was limited to occasional superficial contact
2 with coworkers; and he could have occasional contact with supervisors. Tr. 25.

3 At step four, the ALJ determined Plaintiff had no past relevant work. Tr. 30.
4 At step five, the ALJ determined that based on the testimony of the vocational
5 expert, and considering Plaintiff's age, education, work experience and RFC,
6 Plaintiff could perform other jobs present in significant numbers in the national
7 economy, including the jobs of small products assembler, garment sorter and
8 laundry folder. Tr. 30-31. The ALJ thus concluded Plaintiff was not under a
9 disability within the meaning of the Social Security Act at any time from March
10 11, 2014, the disability application date, through the date of the ALJ's decision,
11 May 2, 2016. Tr. 31.

12 ISSUES

13 The question presented is whether substantial evidence supports the ALJ's
14 decision denying benefits and, if so, whether that decision is based on proper legal
15 standards.

16 Plaintiff contends the ALJ erred in this case by (1) improperly weighing the
17 opinion testimony; and (2) discrediting Plaintiff without specific, clear and
18 convincing reasons to do so. ECF No. 14 at 3.

19 DISCUSSION

20 A. Plaintiff's Symptom Testimony

21 Plaintiff challenges the ALJ's finding that Plaintiff was not entirely credible,
22 Tr. 26. ECF No. 14 at 16-20.

23 It is the province of the ALJ to make credibility determinations. *Andrews*,
24 53 F.3d at 1039. However, the ALJ's findings must be supported by specific
25 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent
26 affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's
27 testimony must be "specific, clear and convincing." *Lester v. Chater*, 81 F.3d 821,
28 834 (9th Cir. 1995). "General findings are insufficient: rather the ALJ must

1 identify what testimony is not credible and what evidence undermines the
2 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915,
3 918 (9th Cir. 1993).

4 In this case, the ALJ found Plaintiff's medically determinable impairments
5 could reasonably be expected to cause the alleged symptoms; however, Plaintiff's
6 statements concerning the intensity, persistence and limiting effects of those
7 symptoms were not entirely consistent with the medical and other evidence of
8 record. Tr. 26.

9 The ALJ first indicated the alleged severity of Plaintiff's workplace
10 limitations was not supported by the objective medical record as a whole. Tr. 26.

11 A lack of supporting objective medical evidence is a factor which may be
12 considered in evaluating an individual's credibility, provided it is not the sole
13 factor. *Bunnell v. Sullivan*, 347 F.2d 341, 345 (9th Cir. 1991) (Once a claimant
14 produces objective medical evidence of an underlying impairment, an adjudicator
15 may not reject the claimant's subjective complaints based solely on a lack of
16 objective medical evidence to fully corroborate the alleged severity of pain.);
17 *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006) (An ALJ may not
18 make a negative credibility finding "solely because" the claimant's symptom
19 testimony "is not substantiated affirmatively by objective medical evidence.").

20 As fully discussed in Section C, below, the medical evidence of record does
21 not support Plaintiff's allegation of disabling physical and mental limitations. *See*
22 *infra*. Consequently, the Court finds the ALJ correctly determined that Plaintiff's
23 subjective complaints were not consistent with the medical evidence of record.

24 The ALJ next stated that Plaintiff's activities of daily living did not support
25 the level of subjective complaints by Plaintiff. Tr. 26.

26 It is well-established that the nature of daily activities may be considered
27 when evaluating credibility. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).
28 While one does not need to be "utterly incapacitated" to be disabled, *id.*, it was

1 proper for the ALJ to find Plaintiff's reports of activities such as mowing lawns,
2 doing household chores, performing odd jobs, socializing with friends on a nearly
3 daily basis, and getting up every day at 8:30 a.m. and going to look for work were
4 inconsistent with his alleged limitations and thus detracted from his overall
5 credibility. Tr. 23-24, 27, 49, 192-193, 264.

6 The ALJ also noted Plaintiff indicated to his treatment providers that he was
7 working odd jobs until at least April 9, 2013. Tr. 26.

8 Social Security regulations provide that employment during any period of
9 claimed disability may be probative of a claimant's ability to work. 20 C.F.R. §§
10 404.1571, 416.971. Moreover, the ability to perform even part-time work can be
11 considered in assessing credibility. *Bray v. Comm'r Social Security Admin.*, 554
12 F.3d 1219, 1227 (9th Cir. 2009) (finding the ALJ properly discounted the
13 claimant's testimony because she recently worked as a personal caregiver for two
14 years and had since sought out other employment).

15 The record reflects Plaintiff continued to work odd jobs to support himself
16 after the alleged onset date. Tr. 23, 264. For example, Plaintiff reported to the
17 Family Practice Clinic on April 9, 2013, that he had continued to work jobs, mostly
18 in lawn maintenance, but only worked enough to pay the bills. Tr. 26, 262. The
19 ALJ properly discounted Plaintiff's credibility on the basis that he continued to
20 perform work during the period of time he claimed disability.

21 The ALJ additionally noted Plaintiff's mental health symptoms improved
22 when he was participating in mental health treatment and taking his medications.
23 Tr. 27.

24 The effectiveness of medication in alleviating pain and other symptoms is a
25 relevant factor to consider in evaluating the severity of a claimant's symptoms. 20
26 C.F.R. § 416.929(c)(3)(iv); *Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d
27 595, 600 (9th Cir. 1999) (an ALJ may properly rely on a report that a plaintiff's
28 mental symptoms improved with the use of medication); *Odle v. Heckler*, 707 F.2d

1 439, 440 (9th Cir. 1983) (noting impairments that are controlled by treatment
2 cannot be considered disabling).

3 Plaintiff's mental health treatment records indicate Plaintiff's symptoms
4 improved when he was participating in mental health treatment and taking his
5 medications. Tr. 27, 349-350. The evidenced improvement of Plaintiff's mental
6 health symptoms was an additional proper basis to discount his subjective
7 complaints.

8 With regard to Plaintiff's mental health condition, the ALJ also stated that
9 Plaintiff continued to use marijuana despite being informed by his treatment
10 providers that his continued use of marijuana could be detrimental to his mental
11 health. Tr. 27, 347. Furthermore, Plaintiff discontinued his mental health
12 treatment during the relevant time period and made little effort to seek additional
13 treatment for his allegedly disabling mental health symptoms. Tr. 27.

14 In assessing a claimant's credibility, an ALJ properly relies upon
15 "unexplained or inadequately explained failure to seek treatment or to follow a
16 prescribed course of treatment." *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th
17 Cir. 2008) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996)); *Fair*,
18 885 F.2d at 603. "[I]f the frequency or extent of the treatment sought by an
19 individual is not comparable with the degree of the individual's subjective
20 complaints, or if the individual fails to follow prescribed treatment that might
21 improve symptoms, we may find the alleged intensity and persistence of an
22 individual's symptoms are inconsistent with the overall evidence of record."
23 S.S.R. 16-3p. Moreover, an "unexplained, or inadequately explained, failure to
24 seek treatment may be the basis for an adverse credibility finding unless one of a
25 'number of good reasons for not doing so' applies." *Orn v. Astrue*, 495 F.3d 625,
26 638 (9th Cir. 2007).

27 Here, Plaintiff's reason for failing to follow treatment advice (discontinue
28 marijuana use) was that he stopped using for a three-month period of time but did

1 not notice a difference. Tr. 50-51. Plaintiff's self-report in this regard does not
2 change the fact that medical providers had informed him that marijuana use might
3 be interfering with his condition and treatment. Tr. 347. Plaintiff's explanation for
4 discontinuing mental health treatment altogether was that he could not trust that his
5 counseling sessions would be kept private from his mother, who worked at the
6 same facility. Tr. 45. However, that rationalization provides no support for
7 Plaintiff not making a greater effort to find a new mental health provider at a
8 different location in the months that followed. The ALJ cited Plaintiff's failure to
9 follow medical advice and lack of effort to secure a new treatment provider in
10 support of his opinion that Plaintiff's condition was not as limiting as alleged.

11 The ALJ is responsible for reviewing the evidence and resolving conflicts or
12 ambiguities in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.
13 1989). It is the role of the trier of fact, not this Court, to resolve conflicts in
14 evidence. *Richardson v. Perales*, 402 U.S. 389, 400 (1971). The Court has a
15 limited role in determining whether the ALJ's decision is supported by substantial
16 evidence and may not substitute its own judgment for that of the ALJ even if it
17 might justifiably have reached a different result upon *de novo* review. 42 U.S.C. §
18 405(g). After reviewing the record, the Court finds that the ALJ provided clear
19 and convincing reasons, which are fully supported by the record, for discounting
20 Plaintiff's subjective complaints. Accordingly, the ALJ did not err by finding
21 Plaintiff's symptom allegations were not entirely credible in this case.

22 **B. Lay Witness Testimony**

23 Plaintiff contends the ALJ erred by not properly evaluating the function
24 report completed by Plaintiff's mother, Sunday Sutton, on May 16, 2014, Tr. 215-
25 222. ECF No. 14 at 16.

26 The ALJ shall "consider observations by non-medical sources as to how an
27 impairment affects a claimant's ability to work." *Sprague v. Bowen*, 812 F.2d
28 1226, 1232 (9th Cir. 1987). The ALJ may not ignore or improperly reject the

1 probative testimony of a lay witness without giving reasons that are germane to
2 each witness. *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993).

3 The ALJ assigned “some weight” to the third party function report
4 completed by Ms. Sutton, but held that Ms. Sutton’s statements were not entirely
5 supported by the medical records and, in any event, the issues Ms. Sutton
6 identified were addressed in the ALJ’s RFC determination. Tr. 29, 215-222. The
7 Court agrees.

8 First, while Ms. Sutton noted that Plaintiff had behavioral issues and was
9 “oppositional,” Tr. 215-222, the ALJ accounted for these noted characteristics by
10 limiting Plaintiff to simple, repetitive, routine, low-stress work with no contact
11 with the general public, occasional superficial contact with coworkers, and only
12 occasional contact with supervisors, Tr. 25. Furthermore, Ms. Sutton specifically
13 indicated she was “not sure” about her answers to many of the questions listed in
14 the report since she did not live with Plaintiff. Tr. 215-222. Finally, as indicated
15 by the ALJ, the objective medical evidence of record does not entirely support Ms.
16 Sutton’s accounts of significant limitations. *See infra*.

17 The Court finds the ALJ provided germane reasons for discounting Ms.
18 Sutton’s lay witness statements in the third party function report.

19 **C. Medical Opinion Testimony**

20 Plaintiff asserts the ALJ erred by failing to properly assess multiple medical
21 source opinions of record. ECF No. 14 at 3-15.

22 In a disability proceeding, the courts distinguish among the opinions of three
23 types of acceptable medical sources: treating physicians, physicians who examine
24 but do not treat the claimant (examining physicians) and those who neither
25 examine nor treat the claimant (nonexamining physicians). *Lester v. Chater*, 81
26 F.3d 821, 830 (9th Cir. 1996). A treating physician’s opinion carries more weight
27 than an examining physician’s opinion, and an examining physician’s opinion is
28 given more weight than that of a nonexamining physician. *Benecke v. Barnhart*,

1 379 F.3d 587, 592 (9th Cir. 2004); *Lester*, 81 F.3d at 830. In weighing the medical
2 opinion evidence of record, the ALJ must make findings setting forth specific,
3 legitimate reasons for doing so that are based on substantial evidence in the record.
4 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). Moreover, the ALJ is
5 required to set forth the reasoning behind its decisions in a way that allows for
6 meaningful review. *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015)
7 (finding a clear statement of the agency’s reasoning is necessary because the Court
8 can affirm the ALJ’s decision to deny benefits only on the grounds invoked by the
9 ALJ). “Although the ALJ’s analysis need not be extensive, the ALJ must provide
10 some reasoning in order for us to meaningfully determine whether the ALJ’s
11 conclusions were supported by substantial evidence.” *Treichler v. Comm’r of Soc.*
12 *Sec. Admin.*, 775 F.3d 1090, 1103 (9th Cir. 2014).

13 The opinion of an acceptable medical source is given more weight than that
14 of an “other source.” 20 C.F.R. §§ 404.1527, 416.927; *Gomez v. Chater*, 74 F.3d
15 967, 970-71 (9th Cir. 1996). Evidence from “other sources” is any information or
16 statements from a non-medical source about any issue in Plaintiff’s claim. 20
17 C.F.R. § 404.1513(a)(4). The ALJ is required to consider observations by non-
18 medical sources as to how an impairment affects a claimant’s ability to work.
19 Pursuant to *Dodrill v. Shalala*, 12 F.3d 915 (9th Cir. 1993), an ALJ is obligated to
20 provide germane reasons for discounting “other source” statements.

21 The ALJ thoroughly reviewed the medical and other evidence in the file,
22 analyzed the testimony, and determined Plaintiff had the RFC to perform light
23 exertion level work with the following limitations: he could frequently reach, push
24 and pull with his dominant right upper extremity; he could occasionally climb
25 ladders, ropes, and scaffolds and crawl; he must avoid concentrated exposure to
26 hazards in the workplace; he was limited to simple, repetitive, routine tasks
27 consistent with unskilled work; he was limited to low-stress work; he could have
28 no contact with the general public; he was limited to occasional superficial contact

1 with coworkers; and he could have occasional contact with supervisors. Tr. 25.
2 The Court finds the credible evidence of record supports the ALJ's RFC
3 determination. *See infra*.

4 **1. Tae-Im Moon, Ph.D.**

5 On May 6, 2013, and April 15, 2014, Dr. Moon completed Mental Source
6 Statement forms. Tr. 263-272. On May 6, 2013, Dr. Moon checked boxes
7 indicating that all basic work activities were only mildly to moderately limited. Tr.
8 265. However, on April 15, 2014, Dr. Moon opined that Plaintiff had marked
9 limitations in his ability to understand, remember, and persist in tasks by following
10 detailed instructions; communicate and perform effectively in a work setting; and
11 maintain appropriate behavior in a work setting. Tr. 270-271. Dr. Moon found
12 that Plaintiff had mild to moderate limitations in the remainder of his workplace
13 abilities. *Id*.

14 The ALJ accorded the April 2014 form report noting marked limitations
15 "limited weight." Tr. 27. The ALJ indicated the marked limitation findings were
16 not supported by the objective medical evidence of record which showed only
17 routine complaints and conservative care and appeared to be entirely based on
18 Plaintiff's self-reported symptoms. Tr. 27-28. The ALJ further noted that the
19 assessed marked limitations were inconsistent with record evidence which showed
20 improvement with treatment. Tr. 28.

21 The evidence of record reflects Plaintiff generally had only mild to moderate
22 limitations in his workplace abilities and his symptoms improved when he was
23 participating in mental health treatment and taking his medications. Tr. 27-29,
24 265, 300, 349-350, 361-362. As Plaintiff reported during Dr. Moon's April 2014
25 examination, although he was diagnosed at age 6 or 7 with bipolar disorder,
26 oppositional defiant disorder, PTSD and ADHD and treated with counseling,
27 Risperdal and antidepressants, Plaintiff nevertheless ceased taking all medications
28 by age 16, Tr. 402, and, as stated previously, discontinued counseling as of April

1 of 2015, Tr. 46. Plaintiff's failure to continue mental health treatment, which
2 appears to have improved his reported symptoms, suggests his condition was not as
3 limiting as alleged by Plaintiff or opined by Dr. Moon.

4 Dr. Moon's April 2014 Mental Source Statement also noted Plaintiff
5 "reported" anger problems and that his mood was labile during the day, yet his
6 mood during the interview was described as "up and good." Tr. 402.
7 Furthermore, objective findings in the April 2014 report indicate Plaintiff's affect
8 was appropriate, his mood calm and his attitude and behavior were good,
9 cooperative and unremarkable. Tr. 405. Given these discrepancies, it was
10 reasonable for the ALJ to conclude the assessed marked limitations were based on
11 Plaintiff's subjective complaints.¹

12 The Court finds substantial evidence supports the ALJ's determination to
13 accord limited weight to the marked mental health limitations assessed in Dr.
14 Moon's April 2014 Mental Source Statement.

15 **2. Jeff Teal, Ph.D.**

16 Dr. Teal performed a psychological/psychiatric examination of Plaintiff on
17 December 28, 2010. Tr. 359-367. Dr. Teal checked boxes indicating Plaintiff had
18 only mild to moderate functional limitations. Tr. 361. The ALJ assigned
19 significant weight to Dr. Teal's report, finding it was supported by the objective
20 medical evidence of record. Tr. 28.

21 Consistent with the ALJ's RFC determination, the findings of Dr. Teal reflect
22 that Plaintiff was capable of performing simple, repetitive, routine, unskilled, low-

23
24 ¹As discussed in Section A, above, the ALJ's reasons for discounting
25 plaintiff's subjective complaints in this case are supported by the evidence of
26 record and free of error. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir.
27 2001) (a physician's opinion may be disregarded when it is premised on the
28 properly rejected subjective complaints of Plaintiff).

1 stress work with no contact with the general public, occasional superficial contact
2 with coworkers and occasional contact with supervisors. Tr. 25, 361.

3 Plaintiff contends Dr. Teal's objective findings which noted some moderate
4 and severe impacts, Tr. 364-367, "compel disability." ECF No. 14 at 10-11.
5 However, Dr. Teal translated these "objective findings" into the mild to moderate
6 functional limitations noted at Tr. 361, and these functional limitations are
7 reflected in the ALJ's ultimate RFC determination. In any event, an ALJ may
8 properly rely upon selected portions of a medical opinion while disregarding other
9 parts. *Magallanes v. Bowen*, 881 F.2d 747, 753 (9th Cir. 1989) ("It is not
10 necessary to agree with everything an expert witness says in order to hold that his
11 testimony contains 'substantial evidence.'" (quoting *Russell v. Bowen*, 856 F.2d
12 81, 83 (9th Cir. 1988))); *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005).

13 The Court finds that the ALJ did not err by crediting Dr. Teal's opinion that
14 Plaintiff had no greater than moderate work related functional limitations.

15 **3. Therapist Arland Pomerinke**

16 Therapist Pomerinke, an "other source," filled out a "Mental Source
17 Statement" form on January 23, 2015. Tr. 304-306. Therapist Pomerinke checked
18 boxes indicating Plaintiff had a few marked mental limitations, would be off task
19 over 30 percent of the workday and would miss two workdays per month. *Id.*

20 The ALJ accorded limited weight to Therapist Pomerinke's opinions. Tr.
21 27. The ALJ indicated the record reflects Plaintiff's condition improved when he
22 was engaged in treatment and taking his medications, Plaintiff was not engaged in
23 treatment and made little effort to seek treatment, and Mr. Pomerinke's check-box
24 form provided little supporting explanation. Tr. 27.

25 As discussed above, substantial record evidence demonstrates Plaintiff's
26 symptoms improved when he was participating in mental health treatment and
27 taking his medications, Tr. 27-29, 265, 300, 349-350, 361-362, yet Plaintiff ceased
28 taking all medications by age 16, Tr. 402, and, discontinued counseling as of April

1 of 2015, Tr. 46. The record also reflects Plaintiff was not engaged in mental health
2 treatment at the time of the administrative hearing and has made little effort to seek
3 additional treatment for his allegedly disabling mental health symptoms.
4 Furthermore, it is permissible for an ALJ to reject a check-box report that does not
5 explain the bases for the medical professional's conclusions. *Crane*, 76 F.3d at
6 253; *Young v. Heckler*, 803 F.2d 963, 968 (9th Cir. 1986) (an ALJ need not accept
7 a treating physician's opinion which is "brief and conclusionary in form with little
8 in the way of clinical findings to support [its] conclusion"). Here, Mr.
9 Pomerinke's mental source statement provides no explanation in support of the
10 limitations assessed on the check-box form.

11 The Court finds the ALJ provided germane reasons for discounting
12 Therapist Pomerinke's report.

13 **4. Rebecca Nelson, ARNP**

14 Nurse Nelson, an "other source," examined Plaintiff in 2010 and 2013 and
15 opined that Plaintiff could perform light to medium exertion level work but had
16 mild limitations in standing, walking and sitting. Tr. 257-259, 369-370. In 2010,
17 Nurse Nelson indicated the physical examination was "pretty normal except for
18 limited flexion and extension of his back with bilateral paraspinal muscle
19 tenderness in the upper lumbar area only," Tr. 377, and opined that Plaintiff was
20 limited to standing two hours before needing a 15-minute break and could sit for
21 an hour and a half before needing to change positions, Tr. 369. At the April 2013
22 evaluation, Nurse Nelson noted Plaintiff reported the low back pain he complained
23 of in 2010 had resolved with increased walking as exercise. Tr. 262.

24 The ALJ accorded significant weight to Nurse Nelson's opinions. Tr. 28.
25 The ALJ indicated Nurse Nelson's opinions were consistent with the objective
26 medical records as a whole; specifically finding the physical examinations and
27 imaging revealed only mild inferior glenoid spurring in the right shoulder but were
28 otherwise essentially normal. Tr. 28, 273.

1 Plaintiff argues the ALJ appropriately accorded weight to Nurse Nelson's
2 opinions, but failed to adequately incorporate all of Nurse Nelson's findings into
3 the RFC determination. ECF No. 14 at 15.

4 Plaintiff asserts the RFC determination contains no allowance for Nurse
5 Nelson's assessment of Plaintiff's need for 15-minute breaks every two hours.
6 ECF No. 14 at 15. No such allowance was necessary. As indicated by Defendant,
7 since normal breaks occur every two hours, S.S.R. 96-9p, two 15-minute breaks
8 combined with a normal lunch period would still be consistent with light exertion-
9 level work. ECF No. 19 at 15. Moreover, this limitation was assessed in
10 December 2010, nearly four years prior to the application date, and, at the April
11 2013 evaluation, Nurse Nelson stated that Plaintiff reported the low back pain he
12 complained of in 2010 had resolved. Tr. 262.

13 Plaintiff also contends that Nurse Nelson's April 2013 assessment of
14 "moderate" limitations in handling, Tr. 258, was inconsistent with the RFC
15 determination. ECF No. 14 at 15. While Nurse Nelson opined that Plaintiff's
16 diagnosed shoulder pain moderately affected Plaintiff's ability to handle, she did
17 not describe or provide any basis for this limitation.² Nevertheless, the written
18 portion of Nurse Nelson's report mentions Plaintiff worked mowing a lawn on
19

20 ²The Court notes that acceptable medical source Natalia Luera, M.D.,
21 completed a physical functional evaluation on April 10, 2014, and concluded
22 Plaintiff could perform medium exertional level work with no handling limitations.
23 Tr. 292-294. In addition, state agency reviewing physician Wayne Hurley, M.D.,
24 concluded on September 29, 2014, that Plaintiff could perform light exertion level
25 work with some right upper extremity limitations, but no handling restrictions. Tr.
26 86-88. The opinions of Drs. Luera and Hurley were accorded significant weight by
27 the ALJ, Tr. 28-29, and Plaintiff has not contested these findings, *see Carmickle v.*
28 *Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008).

1 April 3, 2013, and indicated this activity did not increase his shoulder pain, nor did
2 lawn maintenance generally make his symptoms worse. Tr. 262. Nurse Nelson
3 ultimately determined Plaintiff could perform light exertion level work which was
4 defined on the form as the ability to lift 20 pounds maximum and frequently lift or
5 carry up to 10 pounds, to walk or stand six out of eight hours per day, and “to sit
6 **and use pushing or pulling arm or leg movements most of the day.**” Tr. 259
7 (emphasis added).

8 The Court finds that Nurse Nelson’s opinions do not contradict the ALJ’s
9 RFC determination in this case.

10 CONCLUSION

11 Having reviewed the record and the ALJ’s findings, the Court finds the
12 ALJ’s decision is supported by substantial evidence and free of legal error.

13 Accordingly, **IT IS ORDERED:**

14 1. Defendant’s Motion for Summary Judgment, **ECF No. 19**, is
15 **GRANTED.**

16 2. Plaintiff’s Motion for Summary Judgment, **ECF No. 14**, is **DENIED.**

17 The District Court Executive is directed to file this Order and provide a copy
18 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant
19 and the file shall be **CLOSED.**

20 DATED July 11, 2018.



A handwritten signature in black ink, appearing to be "M", is written over a horizontal line.

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE